



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2005

Mr. Michael W. Dixon
Haley Davis, P.C.
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2005-05027

Dear Mr. Dixon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 228084.

The Crawford Independent School District (the "district") received a request for all documents pertaining to a specified incident between two students. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the submitted information is confidential under FERPA, section 1232g of title 20 of the United States Code. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the Government Code incorporates FERPA into the Act. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). The submitted documents are records maintained by the district that contain information directly related to students. Thus, we agree that the documents constitute education records that are subject to FERPA.

Section 552.114(a) of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995). In this instance, you have submitted information that you contend is confidential under FERPA. Accordingly, we will address your claims.

Under FERPA, a student and the student's parents have an affirmative right of access to the student's own education records, although this right does not extend to information in the student's records that identifies other students. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also* 34 C.F.R. § 99.12(a) ("If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student."). Thus, the requestors in this case have the right under FERPA to inspect and review or be informed of information pertaining to the requestor who is the student in the submitted education records. However, the requestors do not have a right of access to information in the records that pertains to other students.

An educational agency must withhold information from records subject to FERPA only to the extent reasonable and necessary to avoid personally identifying a particular student.

See Open Records Decision Nos. 332 (1982), 206 (1978). Such information includes information that directly identifies a student or parent as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). The submitted information concerns an incident between two students. Because the requestors do not have a right of access to information that pertains to one of these students and the requestors know the identity of this student and the student's identity is inextricably linked with the incident, we find that the submitted information cannot be redacted to the extent reasonable and necessary to avoid identifying this student. Accordingly, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with FERPA.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

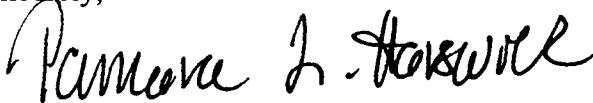
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara L. Harswick". The signature is fluid and cursive, with the first name "Tamara" being more prominent than the last name "Harswick".

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 228084

Enc. Submitted documents

c: Hunter, Barbara & Matt Brown
P.O. Box 771
Valley Mills, Texas 76689
(w/o enclosures)